

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**STATE OF WISCONSIN,  
Plaintiff,**

**v.**

**Case No. 18-C-297**

**TRACY MCCARTHY,  
Defendant.**

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**ORDER**

Tracy McCarthy seeks to remove a state criminal action against him from state to federal court. *See State v. McCarthy*, No. 2016CM0631 (Waukesha Cty. Cir. Ct. filed Mar. 30, 2016). McCarthy cites 28 U.S.C. §§ 1441 and 1446, but those statutes provide for removal of *civil*, not *criminal*, actions. He also cites *Georgia v. Rachel*, 384 U.S. 780 (1966), in which the Supreme Court interpreted 28 U.S.C. § 1443 to allow a criminal defendant to remove a prosecution if the case involves a right under “any law providing for . . . civil rights stated in terms of *racial equality*.” *Id.* at 792 (emphasis added). However, nothing here suggests that this case involves any “law guaranteeing racial equality,” *see Wisconsin v. Glick*, 782 F.2d 670, 672 (7th Cir. 1986), and a review of McCarthy’s related § 1983 case in this court, in which he also filed a notice of removal seeking to remove this state criminal action, *see McCarthy v. Kezeske*, No. 17-CV-0986 (E.D. Wis. filed July 18, 2017), strongly suggests that it does not. Finally, even if this criminal prosecution could have been removed, McCarthy’s notice of removal is clearly untimely and deficient, as it was not filed within “30 days after the arraignment in the State court” or “before trial, whichever is earlier,” and it does not state “grounds for . . . removal.” *See* 28 U.S.C. § 1455(b).

For these reasons, **IT IS ORDERED** that this action be **REMANDED** to the Waukesha County Circuit Court. The Clerk of Court shall close this case.

Dated at Milwaukee, Wisconsin, this 28th day of February, 2018.

/s/ Lynn Adelman  
LYNN ADELMAN  
District Judge